

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARYL E. WAITE,)
)
Plaintiff,)
)
)
v.) Civil Action No. 05-736
) Judge Conti
) Magistrate Judge Caiazza
BEAVER COUNTY, AMBRIDGE) In Re: Doc. 9
POLICE DEPARTMENT,)
)
Defendants.)

ORDER

AND NOW, this 6th day of October, 2005,

IT IS ORDERED that the Plaintiff's Motion to Amend Statement of Claim (doc. no. 14) is GRANTED. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002) ("Under Rule 15(a), if a plaintiff requests leave to amend a complaint vulnerable to dismissal before a responsive pleading is filed, such leave must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment."). While the statute of limitations may be raised by the Defendants as a defense to the Plaintiff's amended claims, it would be an abuse of this court's discretion to disallow him to amend his complaint as of right as no responsive pleading has been filed in this action. It follows that the pending motion to dismiss filed by Defendant Beaver County (doc. no. 9) is DENIED as moot.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.1.3(B) of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

August 18, 2005

s/Francis X. Caiazza
Francis X. Caiazza
U.S. Magistrate Judge

cc:

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